

ORDINANCE NO. 2159

**CITY OF MADISON HEIGHTS,
OAKLAND COUNTY, MICHIGAN**

AMENDMENT TO THE CODE OF ORDINANCES

An Ordinance to amend Ordinance No. 571, being an Ordinance codifying and adopting a new Code of Ordinances for the City of Madison Heights by amending Article XVII of Chapter 7 of the Code of Ordinances, City of Madison Heights, Michigan, to authorize, license and regulate adult-use marihuana establishments in the City of Madison Heights pursuant to Section 6 of the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et. seq. as amended, and the Marijuana Regulatory Agency Adult-Use Marihuana Establishments Emergency Rules promulgated under the Administrative Procedures Act, 1969 PA 306, MCL 24.201 to 24.328, by the Department of Licensing and Regulatory Affairs, Bureau of Marihuana Regulation.

THE CITY OF MADISON HEIGHTS ORDAINS

SECTION 1. Amendment.

That Article XVII of Chapter 7 of the Code of Ordinances, City of Madison Heights, Michigan, is amended in its entirety to read as follows:

ARTICLE XVII. – MARIHUANA ESTABLISHMENTS

Sec. 7-400. – Purpose and Intent.

The purpose of this Article is to establish local standards to authorize, license and regulate adult-use marihuana establishments in the City of Madison Heights pursuant to Section 6 of the Michigan Regulation and Taxation of Marihuana Act, (MRTMA) Initiated Law 1 of 2018, MCL 333.27956, by the City of Madison Heights, in order to:

- (a) Provide authorization for, and local city licensing and regulation of, adult-use marihuana establishments pursuant to the City's general police power granted to cities by the Michigan Constitution of 1963, the Home Rule City Act, MCL 117.1 et. seq., and by the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et. seq., as amended;
- (b) Protect the public health, safety and welfare of the residents of the City and the general public by minimizing the unsafe and unregulated production and sale of adult-use marihuana and to promote the safe, regulated manufacturing, production and sale by properly state-licensed adult-use marihuana establishments;
- (c) Establish regulations, standards and procedures to locate, operate and maintain adult-use marihuana establishments within the City

- (d) License only those entities that have been awarded medical marihuana facilities licenses by the City as a prerequisite to being eligible to obtain adult-use marihuana establishment licenses to consolidate and endorse same location and co-location of the limited number of medical marihuana facilities licenses together with adult-use establishment licenses within the City.

The Federal Controlled Substances Act, Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801 et seq., regulates marihuana as a Schedule I controlled substance, for which there is “no currently accepted medical use in treatment in the United States.” 21 U.S.C. § 812(b)(1)(B). Although the state of Michigan has recognized and authorized the adult-use of marihuana pursuant to the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et. seq., as amended, and has authorized the licensing of marihuana establishments pursuant to the Michigan Regulation and Taxation of Marihuana Act, these state authorized activities remain prohibited by federal law. Nothing in this Article is intended to grant, nor shall be construed as granting, immunity or insulate or shield a business, person, applicant, affiliate, or licensee from federal seizure and/or forfeiture as allowed by federal law and does not insulate a business or owners, employees or agents from federal criminal arrest and/or prosecution. An adult-use marihuana establishment license issued under this Article, and choosing to establish and operate an adult-use marihuana establishment pursuant to that license, is done so at the licensees own risk, and the City shall assume no liability for any actions, claims, liabilities, assertions of liability, losses, costs or expenses.

Sec. 7-401. - Definitions.

For the purpose of the provisions of this Article, all words and phrases herein shall be construed to have the meanings as provided for in the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27951 et. seq., as amended, and the Marijuana Regulatory Agency Adult-Use Marihuana Establishments Emergency Rules promulgated under the Administrative Procedures Act, 1969 PA 306, MCL 24.201 to 24.328, by the Department of Licensing and Regulatory Affairs, Marijuana Regulatory Agency (MRA), and, where applicable, the Medical Marihuana Facilities Licensing Act (MMFLA), Public Act 281 of 2016, MCL 333.27101, et. seq., as amended, the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421, et. seq., as amended, and the Administrative Rules promulgated under the Administrative Procedures Act, 1969 PA 306, MCL 24.201 to 24.328, by the Department of Licensing and Regulatory Affairs, Marijuana Regulatory Agency (MRA), unless the context clearly indicates or requires a different meaning.

Sec. 7-402. – Marihuana establishments authorized.

Pursuant to Section 6 of the MRTMA, MCL 333.27956, the City of Madison Heights authorizes the operation of the following types of adult-use marihuana establishments within the City of Madison Heights: marihuana growers; marihuana safety compliance facilities; marihuana processors; marihuana retailers; and marihuana secure transporters. Provided the establishment has obtained a valid state operating license issued pursuant to the MRTMA, and the facility is in compliance with the additional requirements of this Article and with all other applicable laws, administrative rules and ordinances. No other types of adult-use marihuana establishments are authorized and are expressly prohibited in the City.

Sec. 7-403. – No pre-existing non-conforming establishments.

No person or entity that was open or operating any establishment purporting to produce, manufacture, test, transfer or transport adult-use marihuana or marihuana prior to the adoption of this ordinance, shall be a lawful use or lawful nonconforming use.

Sec. 7-404. – No effect on Michigan medical marihuana patients or caregivers.

This Article does not apply to or regulate any patient or caregiver activities or conduct that is in compliance with the Michigan Medical Marihuana Act.

Sec. 7-405. – License requirements.

- (a) *License required.* It shall be unlawful for any individual, person, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity or other business entity to conduct business as an adult-use marihuana establishment in the City without having first obtained from the City an annual license pursuant to this Article and any applicable State operating licenses.
- (b) *Medical Marihuana Facilities License required.* Only an individual, person, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity or other business entity that has been granted a medical marihuana facilities license by the City, to operate in the City, may obtain adult-use marihuana establishment licenses. No adult-use marihuana establishment license shall be authorized or issued to any person or entity that has not been awarded a medical marihuana facilities license by the City to operate in the City.
- (b) *License transferrable.* No license issued pursuant to this Article shall be transferred unless approved by the State and City.
- (c) *Fees.*
 - (1) *Application Fee.* The fee to submit a city application to obtain a city license to operate a marihuana establishment in the City shall be set by Resolution of Council and shall be reasonably related to the expenses in processing and reviewing the application. No rebate or refund shall be made of any application fee.
 - (2) *License Fee.* For those applications that are granted a city license, the fee for each city license shall be set by resolution of the City Council, not to exceed \$5,000.00. The required fee for each license shall be paid in full at the time of the approval of the city license to operate a marihuana establishment. No rebate or refund shall be made of any license fee or part thereof by reason of the death of the licensee or by nonuse of the license or discontinuance of the operation of the facility.

- (d) *Number of licenses.* The City has limited the number of licenses issued under this Article and may revise this limit from time to time. The maximum number of each type of City marihuana establishment license allowed by the City shall be:

Type of Facility	Number of Licenses
Marihuana Grower – Class A (100 plants)	None
Marihuana Grower – Class B (500 plants)	None
Marihuana Grower – Class C (2,000 plants) (Stacked 5 per each location of 3)	15
Marihuana Processor	3
Marihuana Secure Transporter	4
Marihuana Safety Compliance Facility	4
Marihuana Retailer	3

- (e) *Application Requirements.*

- (1) Each applicant required to obtain a license from the City under this Article shall make application for said license to the city clerk in the form and manner prescribed by him/her and shall state under oath such facts as may be required for, or applicable to, the granting of such license as provided in this Article and Chapter 7 of the Madison Heights Code of Ordinances.
- (2) In addition to the city application, the applicant shall have obtained and provide to the City, an approved Entity/Individual Prequalification issued by the State. This shall include a copy of the applicable Department of Licensing and Regulatory Affairs, Bureau of Marihuana Regulation, authorizations to operate each of the adult-use marihuana establishments applied for in the city application.

Sec. 7-406. – Application Period.

- (a) At the time this Ordinance is adopted, applications for Adult-Use Marihuana Establishments for city licenses will only be accepted from those entities that have been approved by the City to operate medical marihuana facilities.
- (b) Council may adopt a resolution to establish any additional application periods for accepting new applications for combined and co-located medical marihuana facilities and adult-use marihuana establishments under this Article.

- (c) This section shall not apply to a Marihuana Secure Transporter or Marihuana Safety Compliance Facility and the City shall accept license applications for only those facilities, on an ongoing basis, until such time as the number of allowed licenses have been approved for those specific facilities.

Sec. 7-407. – Reserved.

Sec. 7-408. – Scoring and Selecting Applicants.

- (a) In the event the City receives more eligible applications for a city license than is authorized by the City, the City shall select the Applicant most suitable to operate its facility based on an objective and competitive process. This process is subject to the provisions of this Section. This process is only necessary if the City receives more eligible applications than is authorized for combined and co-located Adult-Use Marihuana Establishments and Medical Marihuana Facilities.
- (b) The City shall assess, evaluate, score, and rank all impacted applications and issue a city license to an Applicant receiving the highest score. Since obtaining a medical marihuana facilities license is required to obtain a co-located adult-use marihuana establishment license, the City, in its application assessment, evaluation, scoring, ranking, and deliberations, shall assess, evaluate, score, and rank each application based upon a scoring and ranking procedure developed by the City consistent with the requirements, conditions, and provisions of Sections 7-305, 7-307 and 7-308 of Article XVI for Medical Marihuana Facilities. The detailed scoring and ranking system shall be provided to each Applicant and included in the application materials developed by the City.

Sec. 7-309. – License Renewal Applications.

- (a) An application for a license renewal required by this Section shall be made in writing to the City Clerk at least 60 days prior to the expiration of an existing license.
- (b) Applicants shall submit a license renewal application in writing to the City Clerk on forms provided by the City. At the time of the renewal application, the Applicant shall pay a nonrefundable license renewal fee, set by resolution of the City Council, not to exceed \$5,000.00, to defray the costs incurred by the City in reviewing the renewal application and to administer, inspect and monitor the approved establishment.
- (c) The Applicant shall also provide all information required by this Section contained in the initial application, including any relevant information that has changed or been updated.
- (d) The application shall include a full and complete copy of all the findings from all inspections, investigations and audits conducted by the state Department of Licensing and Regulatory Affairs and any other state department or agency pertaining to applicants, licensees, adult-use marihuana establishments and medical marihuana facility operations that shall include:
 - (1) Inspections through its state investigators, agents, auditors, or the state police of adult-use marihuana establishments MRTMA, the Administrative Rules and this Article.
 - (2) The details and results of any investigations of individuals employed by medical marihuana facilities.

- (3) The details and results of any inspections and examinations of adult-use marihuana establishments and medical marihuana facilities.
 - (4) The details and results of any inspections, examinations, and audits of records of the licensee.
- (e) The City shall renew Applicant's license unless the City discovers evidence of:
- (1) Any fraud or misrepresentation contained in the city license renewal application;
 - (2) Any purposeful violation of this Ordinance, State Law or Administrative Rule;
 - (3) Loss of the Applicant's State Adult-Use Marihuana Establishment License or Medical Marihuana Facility License;
 - (4) Failure of the Applicant to obtain a State Adult-Use Marihuana Establishment License or Medical Marihuana Facility License within a reasonable time after obtaining a license under this Article; or
 - (5) Conducting business in a manner or in such a way as to constitute a nuisance to the health, safety, or general welfare of the public.

Sec. 7-410. - Location requirements.

- (a) Any and all adult-use marihuana establishments authorized under this Article shall be located in the M-1, Light Industrial or M-2, Heavy Industrial Districts and only at a parcel identified by an official map approved and published by the City for allowed parcels for adult-use marihuana establishments and shall be located at the same location as an approved and licensed medical marihuana facility located on the identical official map published by the City for allowed parcels for medical marihuana facilities. In addition to the M-1 and M-2 Industrial Districts, Safety Compliance Facilities, only, may also be located within the O-1, Office Building District within the City in addition to the M-1 and M-2 industrial districts and shall have no separation distances.
- (b) Adult-use marihuana establishments shall be co-located and at one allowed parcel at the same location with a licensed and approved medical marihuana facility and is a prerequisite to being eligible to obtain adult-use marihuana establishment licenses. All adult-use marihuana establishments shall be at the same location of the limited number of medical marihuana facilities licenses and shall be allowed to stack up to five (5) class C adult-use grow establishments at the same parcel.

Sec. 7-411. – Reserved.

Sec. 7-412. - Operating requirements.

A state operating license and a city license are limited to the scope of the state and city operating licenses issued for that type of adult-use marihuana establishment and shall comply with all of the following:

- (a) A licensee shall post in a conspicuous location all applicable state and city licenses issued for the location and approved adult-use marihuana establishment.
- (b) A licensee shall, at all times, follow and operate the adult-use marihuana establishment in strict compliance with the MRTMA, the Administrative Rules and the requirements of this Article.
- (c) Adult-use marihuana establishments shall be partitioned from any other marihuana establishment, facility, activity or business as required by the MRTMA, MMFLA and the corresponding Administrative Rules. Adult-use marihuana establishments shall not allow onsite or as part of the establishment any of the following:
 - (1) Sale, consumption, or serving of food, except for appropriately processed and packaged marihuana edibles pursuant to the MRTMA, MMMA, MMFLA and Administrative Rules.
 - (2) Sale, consumption or use of alcohol or tobacco products.
 - (3) Consumption, use, or inhalation of a marihuana product.
- (d) No adult-use marihuana establishment shall employ minors as defined in the MRTMA and Administrative Rules.
- (e) Retail hours of operation to sell to marihuana products shall be no earlier than eight a.m., and no later than eight p.m.
- (f) No marihuana shall be cultivated, grown, manufactured, stored or processed in any manner that would emit odors beyond the interior of the structure or which is otherwise discernable to another person. The odor must be prevented by the installation of an operable filtration or ventilation and exhaust equipment and odors must otherwise be effectively confined to the interior of the building from which the odor is generated.
- (g) No outdoor storage is allowed at any licensed location.
- (h) Obtain any inspections and permits required for local or state building inspection, fire services, and public health standards for each establishment.
- (i) Proof of Insurance. No Licensee shall commence any business operations until they have obtained the insurance required under this Section and shall keep such insurance in force during the all business operations. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan and acceptable to the City of Madison Heights.

1. Worker's Compensation Insurance including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
2. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$3,000,000 per occurrence and aggregate. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included.
3. Professional Liability: The Licensee shall procure and maintain, during the life of their city license, Professional Liability insurance in an amount not less than \$1,000,000 per occurrence and aggregate. If this policy is claims made form, then the Licensee shall be required to keep the policy in force, or purchase "tail" coverage, for a minimum of 3 years after the termination of their city license.
4. Additional Insured: Commercial General Liability, as described above, shall include an endorsement stating the following shall be Additional Insureds: The City of Madison Heights, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed by naming the City of Madison Heights as additional insured, coverage afforded is considered to be primary and any other insurance the City of Madison Heights may have in effect shall be considered secondary and/or excess.
5. Cancellation Notice: All policies, as described above, shall include an endorsement stating that is it understood and agreed Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change, or Ten (10) days Advance Written Notice for non-payment of premium, shall be sent to: City of Madison Heights, 300 West 13 Mile, Madison Heights, MI 48071.

SECTION 2. Repealer.

All ordinances, or parts of ordinances, in conflict with this ordinance are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. Severability.

Should any section, subdivision, clause, or phrase of this ordinance be declared by the courts to be invalid, the validity of the ordinance as a whole, or in part, shall not be affected other than the part invalidated.

SECTION 4. Savings.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

SECTION 5. Effective Date.

This ordinance as ordered shall take effect ten (10) days after its adoption and upon publication.

SECTION 6. Inspection.

A copy of this ordinance may be inspected or purchased at the City Clerk's office between the hours of 8:00 a.m. and 11:30 a.m. and between the hours of 12:30 p.m. and 4:30 p.m. on regular business days.